

Fresno, California

April 13, 2004

The City Council met in regular session at the hour of 8:31 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Tom Boyajian	Councilmember
	Brian Calhoun	Councilmember
	Mike Dages	Councilmember
	Jerry Duncan	Councilmember
	Henry Perea	Acting Council President
	Cynthia Sterling	Councilmember
	Brad Castillo	Council President

Dan Hobbs, City Manager
Andy Souza, Assistant City Manager
Hilda Cantu Montoy, City Attorney
Becky Klisch, City Clerk
Yolanda Salazar, Assistant City Clerk

Father Perry of St. Paul Newman Center gave the invocation, and President Castillo led the Pledge of Allegiance to the Flag.

SPCA PET OF THE MONTH - COUNCILMEMBER BOYAJIAN

The pet of the month, a Siamese-mixed kitten, was showcased.

PROCLAMATION OF CHILD ABUSE PREVENTION MONTH

1. AUTHORIZE STAFF TO DISPLAY THE FLAG COMMEMORATING CHILD ABUSE PREVENTION MONTH AT CITY HALL - PRESIDENT CASTILLO

The proclamation was read and presented.

On motion of President Castillo, seconded by Councilmember Sterling, duly carried, RESOLVED, the flag commemorating Child Abuse Prevention Month to be displayed at City Hall, by unanimous Council vote.

PROCLAMATION OF NATIONAL TELECOMMUNICATORS WEEK - CITY MANAGER

PROCLAMATION OF POETRY IN MOTION DAY - COUNCILMEMBER BOYAJIAN

PRESENTATION OF LIFE SAVER COMMENDATION TO CLARK LIMA OF THE WATER DIVISION - ACTING PRESIDENT PEREA

PROCLAMATION OF NATIONAL TARTAN DAY - COUNCILMEMBER CALHOUN

The above proclamations and commendation were read and presented.

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APPROVE CITY COUNCIL MINUTES:

On motion of Councilmember Sterling, seconded by Councilmember Dages, duly carried, RESOLVED, the minutes of March 30, 2004, approved as submitted.

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APPROVE JOINT POWERS FINANCING AUTHORITY (JPFA) MINUTES:

On motion of Member/Councilmember Duncan, seconded by Vice Chair/President Castillo, duly carried, RESOLVED, the minutes of JPFA March 30, 2004, approved as submitted.

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COUNCILMEMBER REPORTS AND COMMENTS:

REQUEST FOR STATUS REPORT/UPDATE ON ADDING WIRELESS INTERNET CAPABILITIES AT THE CONVENTION CENTER AND THE AIRPORT - COUNCILMEMBER DUNCAN

Request made.

CONGRATULATIONS TO BARRY BONDS, SAN FRANCISCO GIANTS, ON HIS HISTORIC 660TH HOME RUN - COUNCILMEMBER DUNCAN

Councilmember Duncan congratulated Mr. Bonds on behalf of all the Giants fans and added he had the honor of seeing the homerun himself.

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APPROVE AGENDA:

(9:15 A.M. #1) PRESENTATION BY CALIFORNIA PUBLIC UTILITIES COMMISSIONER LORETTA LYNCH ON VARIOUS ISSUES INCLUDING A REPORT ON A TOWN HALL TRAIN SAFETY MEETING - COUNCILMEMBER CALHOUN

-AND-

(9:15 A.M. #2) PRESENTATION BY PG&E REGARDING FRANCHISE FEES - PRESIDENT CASTILLO

Councilmember Calhoun questioned why his item (9:15 a.m. #1) was linked with the second item stating there was no connection at all, with President Castillo advising he would be removing 9:15 a.m. #2 from the agenda.

(10:30 A.M.) HEARING ON PLAN AMENDMENT NO. A-03-11, REZONE APPLICATION NO. R-03-57, FILED BY JOHN ALLEN
(CONTINUE TO APRIL 20, 2004, AT 11:00 A.M.)

City Clerk Klisch stated Fresno County would be considering the above issue on April 26th and advised the matter was being continued to April 27, 2004, at 10:15 a.m. instead of to April 20th. So noted.

REQUEST TO STAFF TO SCHEDULE A DATE FOR THE URBAN FOREST WORKSHOP - COUNCILMEMBER DAGES

Request made.

(9:15 A.M. #2) PRESENTATION BY PG&E REGARDING FRANCHISE FEES - PRESIDENT CASTILLO

Removed from the agenda by President Castillo.

On motion of Councilmember Dages, seconded by Acting President Perea, duly carried, RESOLVED, the **AGENDA** hereby approved, by the following vote:

Ayes	:	Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes	:	None
Absent	:	None

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ADOPT CONSENT CALENDAR:

(1-A) RESOLUTION NO. 2004-122 - APPROVING THE REALLOCATION OF \$500,000 FROM PEACE OFFICER STANDARDS AND TRAINING (POST) CONTINGENCY TO CONTINUE TO MEET EXPENSES ASSOCIATED WITH THE PROVISION OF POLICE OFFICER TRAINING

(1-B) RESOLUTION NO. 2004-123 - AUTHORIZE AN APPLICATION TO THE U.S. DEPARTMENT OF HOMELAND SECURITY THROUGH THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES FOR \$7 MILLION OF THE URBAN AREA SECURITY INITIATIVE GRANT PROGRAM AND COMPLETION OF RELATED DOCUMENTS

(1-D) AWARD A CONTRACT TO INSITUFORM TECHNOLOGIES OF CHESTERFIELD, MISSOURI, IN THE AMOUNT OF \$98,678 TO REHABILITATE THE WASTEWATER COLLECTION PIPELINE WHICH HAS DETERIORATED IN CALIFORNIA AVENUE FROM TEILMAN TO FRUIT AVENUES

Councilmember Calhoun noted this was a single contract and he always has a concern with one bidder, and added even though the bid came in 7% above the estimate he felt it was within the range of his comfort zone and would support it.

(1-E) AWARD A ONE-YEAR REQUIREMENTS CONTRACT, WITH PROVISIONS FOR TWO ONE-YEAR EXTENSIONS, TO CARBON ACTIVATED CORPORATION OF COMPTON, CALIFORNIA, IN THE AMOUNT OF \$97,524.37 TO REMOVE AND/OR INSTALL GRANULAR ACTIVATED CARBON WHICH WILL BE USED FOR THE REMOVAL OF DBCP FROM DRINKING WATER

(1-F) RESOLUTION NO. 2004-124 - 75TH AMENDMENT TO AAR 2003-209 APPROPRIATING \$727,200 FOR THE UPGRADE OF THE PEOPLESOFT FINANCIAL SOFTWARE

(1-G) APPROVE THE ACQUISITION OF STREET EASEMENTS FROM FOUR (4) PARCELS AND ACCEPT AN INTERIM RIGHT OF ENTRY FOR ONE PARCEL FOR THE WIDENING OF NORTH AVENUE BETWEEN FREEWAY ROUTE 41 AND FREEWAY ROUTE 99, AND AUTHORIZE THE ASSISTANT PUBLIC WORKS DIRECTOR TO EXECUTE THE PURCHASE DOCUMENTS NECESSARY TO COMPLETE ACQUISITION OF EASEMENTS FROM FOUR PARCELS AND SIGN THE RIGHT OF ENTRY AGREEMENT FOR ONE PARCEL

(1-I) RESOLUTION NO. 2004-125 - INTENT TO ANNEX FINAL TRACT NO. 5163 TO CITY OF FRESNO FACILITIES DISTRICT NO. 2, ANNEXATION NO. 68

(1-J) RESOLUTION NO. 2004-126 - EXTENDING PAYMENT OF SALARY DIFFERENCE BENEFITS AND THE CITY'S PORTION OF THE EMPLOYEES' HEALTH AND WELFARE CONTRIBUTIONS TO PERMANENT CITY EMPLOYEES CALLED INTO ACTIVE DUTY AS A RESULT OF THE ONGOING MIDDLE EASTERN CONFLICT

(1-L) RESOLUTION NO. 2004-127 - 12TH AMENDMENT TO SALARY RES. 2003-213 CHANGING THE STATUS OF THE CLASS OF CLAIM SPECIALIST FROM NON-EXEMPT TO EXEMPT

(1-M) RESOLUTION NO. 2004-128 - 9TH AMENDMENT TO PAR 2003-210 ADDING ONE POSITION TO THE POLICE DEPARTMENT FOR THE PROSTITUTION ABATEMENT AND REHABILITATION PROGRAM

Councilmember Calhoun stated he originally had a concern with making the position full time but he was in support after learning the position would pay for itself with fines and funding for the Marjaree Mason Center and the ESCAPE program would not be jeopardized.

On motion of Councilmember Dages, seconded by Councilmember Sterling, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes	:	Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes	:	None
Absent	:	None

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(9:15 A.M. #1) PRESENTATION BY CALIFORNIA PUBLIC UTILITIES COMMISSIONER LORETTA LYNCH ON VARIOUS ISSUES INCLUDING A REPORT ON A TOWN HALL TRAIN SAFETY MEETING - COUNCILMEMBER CALHOUN

Opening comments were made by Councilmember Calhoun who spoke to the issue of railroad safety **(2 - 0)** including the committee that was appointed to discuss railroad safety and invitations extended to the PUC to discuss their role in railroad safety; advised a reception was held for Ms. Lynch of the PUC on Monday night which was followed by a successful public meeting on railroad issues and thanked all those involved in setting up the meeting and staff and the media for publicizing it; and noted a death occurred in the city on the railroad just last night stating it was a horrible irony with the PUC being here to discuss train safety and introduced Ms. Lynch.

Ms. Lynch gave a PowerPoint presentation on Fresno County's accident rate and statistics, dangerous crossings, ongoing improvements, State law on train horns, and Quiet Zones including standards, Friday's comment period deadline, need for Fresno to submit comments on the rules and work with the PUC, and focus on improving railroad safety features to meet the standards to become a Quiet Zone.

Barbara Hunt, 2475 S. Walnut, spoke to the need for railroad crossings in rural areas, to the fault of people who illegally cross railroad tracks, and in opposition to draining government dollars for railroad issues.

Councilmember Sterling thanked Ms. Lynch and her staff for their appearance and Councilmember Calhoun for keeping the issue at the forefront and spoke further to the Quiet Zone issue. Lengthy discussion ensued. Assistant City Manager Souza, Ms. Lynch, Mr. Haygood, City Attorney Montoy, City Manager Hobbs, Councilmember Calhoun and Assistant Public Works Director Kirn responded to questions and/or comments of Councilmember Boyajian and President Castillo relative to the importance of the Quiet Zone issue and why Council did not receive any information on it, the noise problem and its affect on neighborhoods, if Fresno's safety record could be a hindrance in becoming a Quiet Zone, how the PUC was involved, if grant dollars were available to help the city become a Quiet Zone, if the railroad would assist the city, if a study would be performed, involvement of the railroad committee, specifics of the Quiet Zone program, what happens to comments that are submitted, eliminating crossings and need for funding, funding requirements, which city staff members would review the rules and provide comments, timeline for an analysis on how to make the city's crossings safer, if other cities hire experts to work with them, what staff's analysis would entail, and if Quiet Zones were basically in residential areas. Speaking to the comment deadline, Councilmember Calhoun encouraged staff to work with Council Executive Analyst Sparks on the issue and there was no further discussion.

(9:30 A.M.) GIVE STAFF DIRECTION REGARDING LIABILITY INSURANCE OPTIONS FOR ROEDING PARK STORYLAND AND PLAYLAND - COUNCILMEMBER DUNCAN

Councilmember Duncan reviewed the issue as contained in his report to Council as submitted, noted the three options being presented for Council consideration were: (1) do nothing and hope Playland/Storyland raises the money to fund their liability insurance, (2) write a check, but stated he did not think this would solve the problem and explained, and (3) extend the city's self-insurance program to cover the first \$2.5 million in liability coverage for Playland/Storyland with Playland/Storyland taking out a private policy to cover any loss in excess of the \$2.5 million; and stated he hoped Council would select either Option 2 or 3 as both were valid options but clarified his preference was Option 3 as he felt the risk was manageable and the Board of Directors had committed to do whatever it takes on an on-going basis to insure the city is comfortable with whatever level of risk there may be out there.

(3 - 0) Doug Holton, Vice President of the Board of Trustees of Playland/Storyland, gave a further in-depth review of the matter and all related issues, spoke in support of Option 3, and concluded stating they had been a good tenant for the past 50 years and they would cooperate with the city.

Assistant City Manager Ruiz spoke to the city's self-insurance program; advised staff's concerns with Option 3 were precedence, opening the city up for additional exposure, and the risky industry/the city becoming liable for future risks; and stated if Council does decide to assist staff was recommending Option 2.

Barbara Hunt, 2475 S. Walnut, expressed concern with the 11th hour request for assistance and spoke to the need for the city to take complete control of the attractions.

Discussion ensued. Mr. Ruiz responded to questions/comments of Councilmember Duncan relative to Option 2 (where the funds would come from), and Option 3 (if Playland/Storyland would be set up and charged on a risk level like city departments, and if there were any challenges to be "ready to go" by May 1st). Councilmember Duncan stated he would hold off on making a motion as both options were good and both would work. Councilmember Calhoun noted the city had already invested money in the attractions in terms of evaluations; stated the city would be crossing the line with the investment of taxpayer dollars with either Option 2 or 3 and added the Trust would never again have complete control as the city would be providing oversight in a way that was not provided in the past; commented further on the issue and options and questioned why this was not included with the tasking for the Chaffee Zoo; stated he felt Option 3 crossed the line too far and he could support Option 2 because it would resolve the immediate problem and give some breathing room; suggested each Councilmember contribute \$5,000 from their infrastructure budgets to help with the \$70,000 cost; and made a motion to approve Option 2. Councilmember Sterling spoke to the issue at length, to the need for the city to do its part to make sure these venues in Roeding Park continue to provide public enjoyment, memories and educational experiences for a lifetime, and gave an in-depth explanation of why she supported Option 3.

Extensive discussion continued. Mr. Holton, Councilmember Duncan, an unidentified Playland/Storyland representative, Mr. Ruiz and City Attorney Montoy responded to questions/comments of Councilmember Boyajian at length relative to the amount paid by the Board of Directors in the past, if they were unable to pay anything at this time, if \$70,000 was a final amount, if there were plans for fund raising, if other insurance carriers were looked at, liability issues, if there was any way to reduce the city's obligation, if Option 3 could cost more than Option 2, need to consider the Zoo and Storyland and Playland as one, and if the city attorney had input on the recommendations **(4 - 0)** and if she had a recommendation. Councilmember Boyajian seconded Councilmember Calhoun's motion on the floor for Option 2, stated he would like the amount to be mitigated, and upon question Councilmember Calhoun stated the amount would be flexible to meet any requirements and assist the Board this year. Councilmember Dages stated the public sees the Zoo and Storyland and Playland as one; questioned how much the public and the Board has contributed to Storyland over the years; stated he questioned staff's recommendation for Option 2 because Council is always hearing "gloom and doom", he was a little disappointed with staff's nine reasons on why Option 3 would not work and explained, and added there had never been a death or serious injury at Storyland and Playland; questioned if the hazards identified in the analysis would be addressed; advised of his concerns with Option 2 and his support for Option 3 stating it was time for Council to step up the plate and take on the liability, with Mr. Holton responding to questions throughout. Acting President Perea stated his concern with Option 3 was precedence and he supported staff's recommendation, and questioned if there was a certain amount of non-profits the city could handle, if the Mayor also supported Option 2, and if this issue was subject to veto. Mr. Hobbs responded to questions; stated the threshold question here was should the city provide support to a community organization, which he stated was a policy call, and clarified since Council was indicating they did want to provide support in some fashion staff felt Option 2, which would provide a grant to have the insurance, was the least risky to the city; and acknowledged Playland/Storyland had a good experience of few injuries but stated all it would take was just one bad accident and the city would have exposure up to \$2.5 million. Acting President Perea reiterated his concern was setting a precedent and added more non-profits would come knocking on the city's door, and reiterated his support for Option 2 stating it was a temporary solution and would buy time for a long-term solution. In defense of Option 3 Councilmember Sterling added the issues of the State's fiscal problems and Roeding Park being on city property and being the city's responsibility needed to be considered; stated the idea of insurance was to eliminate risk as much as possible and pointed out Playland/Storyland have maintained a minimal risk factor in tough situations; stated going with Option 3 would not require any additional funds, and explained, and would eliminate the Board having to come back to the city every year to request assistance; and stated Council needed to step out of the box and added she would be willing to work with the Board to help find the right insurance company. Councilmember Boyajian stated not having control of the facilities but insuring the property was a huge risk to the city; Councilmember Duncan noted the issue of precedence had already been addressed as the city had covered the facilities in the past with the city's self-insurance during gaps and may end up doing it again and explained; and Ms. Montoy clarified either option would have to come back to Council.

Mr. Ruiz, Ms. Montoy, Mr. Holton and Mr. Hobbs responded at length to questions and comments of President Castillo relative to whether this issue would be discussed if the facilities were not located in a city park, if any non-profit could be brought under the city's umbrella if Council so chooses (referencing the Discovery Center's request to him for assistance after their fire), if the city would automatically have to pay the premium if Playland/Storyland chose not to pay or could not pay, if another option -- a wrap-type of insurance -- had been considered, exposure and risk and what items identified for repair had been repaired (with Mr. Holton stating all of the items would be corrected prior to the city providing coverage except for the trip and fall hazards and explained), who in the city would be responsible to insure the deficiencies had been addressed, if the city would become responsible for ADA compliance if coverage is provided, request for a report from staff on answers to all questions presented and timeline for that report including funding source, concern that insurance

companies see “deep pockets” with the city of Fresno and the potential for higher costs automatically, payroll/payment for Board members or staff/administrative costs, how many other similar-type facilities exist in the city that could come and ask for the same type of coverage, willingness of the Board to disassociate and start over and how much city oversight the Board was willing to allow **(5 - 0)**, if a contract would be developed addressing all the issues and brought back, and if the lessor is always named in a lawsuit.

143-117

4/13/04

A motion of Councilmember Calhoun, seconded by Councilmember Boyajian, to approve Option 2 to pay the insurance premium for one year with the final amount to be worked out, failed, by the following vote:

Ayes : Boyajian, Calhoun, Perea
Noes : Dages, Duncan, Sterling, Castillo
Absent : None

A motion was made to approve Option 3, brief discussion ensued, and it was confirmed all the identified deficiencies would be repaired prior to the city providing coverage and that an agreement covering all the issues and placing the city in the best position would come back to Council.

On motion of Councilmember Duncan, seconded by Councilmember Sterling, duly carried, RESOLVED, Option 3 covering Storyland/Playland for the first \$2.5 million under its self-insurance, with Storyland/Playland to take out a private policy to cover the loss in excess of the \$2.5 million, hereby approved, and staff to bring back a report and contract setting forth all obligations with respect to safety and premiums and putting the city of Fresno in the best position, by the following vote:

Ayes : Dages, Duncan, Sterling, Castillo
Noes : Boyajian, Calhoun, Perea
Absent : None

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(10:00 A.M.) HEARING TO CONSIDER THE VACATION OF WASHINGTON AVENUE BETWEEN THESTA STREET AND THE FRESNO-HOWARD ALLEY, HOWARD STREET BETWEEN MCKENZIE AND WASHINGTON AVENUES, AND THE HOWARD-THESTA ALLEY - R.I. 1033-D
1. RESOLUTION NO. 2004-129 - ORDERING THE VACATION OF PORTIONS OF WASHINGTON AVENUE, HOWARD AVENUE AND THE THESTA-HOWARD ALLEY

President Castillo announced the time had arrived to consider the issue and opened the hearing. Assistant Public Works Director Kirn gave a brief overview of the issue as contained in the staff report as submitted.

Barbara Hunt, 2475 S. Walnut, spoke in opposition. Councilmember Dages briefly left the meeting at 11:50 a.m.

Upon call, no one else wished to be heard and President Castillo closed the hearing.

Upon question of Councilmember Sterling, Mr. Kirn confirmed the request for the vacation was made by the Fresno Unified School District and no city funds were involved.

On motion of Councilmember Sterling, seconded by Councilmember Duncan, duly carried, RESOLVED, the above entitled Resolution No. 2004-129 hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Duncan, Perea, Sterling, Castillo
Noes : None
Absent : Dages

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(10:15 A.M.) HEARING TO CONSIDER THE VACATION OF THE SOUTHEAST 100 FEET OF THE BROADWAY-“H” ALLEY BETWEEN AMADOR AND SACRAMENTO STREETS - R.I. 1034-D
1. RESOLUTION NO. 2004-130 - ORDERING THE VACATION OF THE SOUTHEAST 100 FEET OF THE BROADWAY-“H” ALLEY BETWEEN AMADOR AND SACRAMENTO STREETS, SUBJECT TO CONDITIONS SPECIFIED THEREIN

President Castillo announced the time had arrived to consider the issue and opened the hearing. Assistant Public Works Director Kirn reviewed the issue as contained in the staff report as submitted and noted this was in conjunction with the housing project by Granville Homes.

143-118 **4/13/04**

Jeff Roberts, representing Granville Homes and Pyramid Homes, displayed a site plan of the project, stated he concurred with staff’s recommendation and conditions imposed, and reviewed the project and urged Council’s support. Councilmember Dages returned to the meeting at 11:57 a.m.

Barbara Hunt, 2475 S. Walnut, spoke in opposition.

Upon call, no one else wished to be heard and President Castillo closed the hearing.

Upon the request of the city attorney, Mr. Kirn explained some of the issues staff had to contend with relative to the no turn-around space and the city’s policy against dead-end alleys. Councilmember Sterling spoke in support of the issue, stated she spoke with surrounding property owners on concerns and advised with the conditions imposed all the concerns had been worked out, and made a motion to approve staff’s recommendation, which motion was seconded and acted upon after brief discussion.

Mr. Kirn responded to questions and/or comments of Councilmember Calhoun, Acting President Perea and Councilmember Boyajian and/or clarified issues relative to the alley issue, precedent-setting for future projects/if this action would bind future councils, if the alley would be gated with keys provided, timeline/start date for the project, the difference with this alley and alleys in older neighborhoods that are used for solid waste pickup, and need to help developers who want to invest in the inner-city.

On motion of Councilmember Sterling, seconded by Acting President Perea, duly carried, RESOLVED, the above entitled Resolution No. 2004-130 hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes : None
Absent : None

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The City Council recessed at 12:14 p.m. and convened in joint session with the Redevelopment Agency

(10:45 A.M.) JOINT MEETING WITH THE REDEVELOPMENT AGENCY

APPROVE AGENCY MINUTES OF MARCH 30, 2004

On motion of Councilmember Sterling, seconded by Councilmember Dages, duly carried, RESOLVED, the Agency minutes of March 30, 2004, approved as submitted.

(“A”) JOINT HEARING TO CONSIDER AND RECOMMEND THE JOINT BODIES APPROVE A HOUSING PROJECT INCLUDING THE JOINT RESOLUTION APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE REDEVELOPMENT AGENCY AND 1145 SAN BENITO AVENUE, LP, A CALIFORNIA LIMITED PARTNERSHIP BY THE CORPORATION OF BETTER HOUSING, ITS MANAGING GENERAL PARTNER (THE “DEVELOPER”), TO SELL TWO AGENCY PROPERTIES FOR THE DEVELOPMENT OF 55 APARTMENT UNITS SUBJECT TO AFFORDABILITY RESTRICTIONS
1. JOINT COUNCIL/AGENCY RESOLUTION NO. 2004-131/1648 - APPROVING THE DDA FOR THE DEVELOPMENT OF 55 APARTMENT UNITS SUBJECT TO AFFORDABILITY RESTRICTIONS

Chair Boyajian announced the time had arrived to consider the issue and opened the hearing. Redevelopment Administrator Murphey reviewed the issue as contained in the staff report as submitted and recommended approval.

Ben Lingo, Project Developer representing the Corporation of Better Housing, spoke briefly and thanked staff and the Southwest Committee.

Barbara Hunt, 2475 S. Walnut, spoke to various concerns.

Councilmember Sterling spoke in support of the project and to the desperate need for housing in her district and made a motion to approve staff's recommendation, and Councilmember Boyajian commended and thanked the developer and staff.

143-119

4/13/04

On motion of Councilmember Sterling, seconded by Councilmember Duncan, duly carried, RESOLVED, the above entitled Joint Council/Agency Resolution No. 2004-131/1648 hereby adopted, by the following vote:

Ayes	:	Calhoun, Castillo, Dages, Duncan, Perea, Sterling, Boyajian
Noes	:	None
Absent	:	None

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The joint bodies adjourned their meeting at 12:26 p.m. and the City Council reconvened in regular session.

A citizen requested to be heard under unscheduled oral communications and upon a majority vote Council broke for lunch.

LUNCH RECESS - 12:27 P.M. - 2:00 P.M.

(2:00 P.M. #1) CONTESTED CONSENT ITEMS:

(1-C) AUTHORIZE THE CITY MANAGER, OR DESIGNEE, IN COOPERATION WITH THE COUNTY OF FRESNO, TO MODIFY THE FRESNO CITY/COUNTY TRAFFIC SAFETY ENFORCEMENT AGREEMENT AS NEEDED, PURSUANT TO SECTION 8 OF THE AGREEMENT

President Castillo stated he had a real concern with the language to modify the agreement "as needed" stating it could be mean one of many things and he wanted it more specific, with Deputy Police Chief Fifield explaining the issue and giving examples of where staff felt this flexibility was needed (**6 - 0**), and responded to questions relative to revenues generated, the amount agreed upon, and why Fresno County needed an additional \$250,000 on top of what they agreed to when that money could go to hiring more traffic officers.

City Attorney Montoy stated she had a concern with the way this issue was brought forward, noted Council was being asked to accept an amendment but the amendment was not reflected anywhere, and recommended if authority is given to the city manager to modify the agreement as needed that each amendment, including this one, be memorialized as the 1st amendment, 2nd amendment, etc., and that each amendment also be provided to Council.

On motion of President Castillo, seconded by Acting President Perea, duly carried, RESOLVED, the City Manager, or designee, in cooperation with the County of Fresno, hereby authorized to modify the Fresno City/County Traffic Safety Enforcement Agreement pursuant to Section 8 of that agreement, by the following vote:

Ayes	:	Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes	:	None
Absent	:	None

(1-H) APPROVE APPOINTMENTS OF GENE RICHARDS (DISTRICT 3), WILLIAM SCOTT (DISTRICT 2) AND JAMES POPTANICH (DISTRICT 2) TO THE BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

Councilmember Dages stated he was opposed to the process noting all other city committee had a process with a certain number of members; stated with this committee there could be an unlimited number of members and there was no formal appointment process; and made a motion to refer the matter back to staff and for staff to report back with a formal process consistent with the other city committees. The motion was seconded by Councilmember Duncan who stated the intent was for a nine member board with each council member to make one appointment and the Mayor making two, and added he only appointed one member and not three as shown and stated these issues needed to be clarified for consistency. City Manager Hobbs also noted the language was loose in that it stated “members may consist of representatives from each council district” and that could be made mandatory, and recommended a workshop be held with the committee when all members are appointed stating staff needed to understand Council’s position on certain issues such as the bike lanes versus parking issue Council recently dealt with.

City Attorney Montoy advised a handbook was prepared for boards and commissions and Council would be getting their copy, advised in that process it was found there were a number of ways that boards, commissions, committees are set up and there was no one central way, and stated staff would be proposing and bringing forth a uniform process on terms, requirements and authorities in a couple of weeks.

143-120

4/13/04

Councilmember Boyajian questioned who his appointees were, if there were nine voting members, and if language was going to be changed, with Assistant Public Works Director Elam responding. Councilmember Dages clarified the matter was originally presented for 9 members with 1 appointed by each councilmember and 2 by the Mayor and he wanted that brought back along with language that members “shall” consist of representatives from each council district, with Mr. Elam questioning what would happen to the existing members and those that did not coincide with council districts. Mr. Hobbs noted there were currently eight members and some council districts had no members and requested direction on how Council wanted this committee structured and stated staff could go back and figure out recommendations. Councilmember Dages clarified he wanted his motion to also reflect nine members with two appointed by the mayor and one appointed by each council member.

Councilmember Calhoun pointed out Mr. Elam was questioning what should be done with the members who were already appointed stating that was a legitimate question, stated Council and staff owed the confirmed members some explanation as to why they might be bounced or what-have-you, and stated he would not support the motion until staff is given some direction on how to unravel this adding Councilmember Dages’ direction was inadequate. Acting President Perea concurred and stated he could not support the motion as people had been appointed and had been serving with some appointed for 3-year terms. Mr. Hobbs stated staff could revise language to reflect one member from each district and two by the Mayor and for the interim period suggested existing members be respected and retained. Councilmember Calhoun stated he wanted the current members retained whereupon Councilmember Dages reiterated he wanted the process consistent with the other boards and commissions, changed his motion to specify council members could appoint anyone from any district, and stated he saw no problem keeping the current members and added if anyone is left out in the sideline he would appoint that person as he did not have anyone representing his office. Councilmember Sterling questioned if there was a breakdown by districts, stated she always tries to make appointments from within her district for best representation, and stated when the time comes she will want all her appointees to be from her district.

City Clerk Klisch clarified eight members were appointed last October and the names were submitted by the public works department and not by council members.

A motion of Councilmember Dages, seconded by Councilmember Duncan, to refer the appointments back to staff, direct staff to return within 30 days with a recommendation including a nine member committee (one appointee by each councilmember and two by the mayor’s office), an appointment process consistent with the other boards, commissions and committees, and language specifying it is not necessary that appointees reside within the district of the appointing authority failed, by the following vote:

Ayes	:	Dages, Duncan, Sterling
Noes	:	Boyajian, Calhoun, Perea, Castillo
Absent	:	None

On motion of President Castillo, seconded by Acting President Perea, duly carried, RESOLVED, the subject appointments referred back to staff, staff directed to return within 30 days with a recommendation including a nine member committee (one appointee by each councilmember and two by the mayor’s office), an appointment process consistent with the other boards, commissions and committees, and language specifying it not be necessary that appointees reside within the district of the appointing authority, AND, BE IT FURTHER RESOLVED, all existing members previously confirmed to be retained, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes : None
Absent : None

(1-K) AUTHORIZE THE CHIEF INFORMATION OFFICER TO NEGOTIATE AND ENTER INTO A “PIGGYBACK” CONTACT WITH ORACLE CORPORATION FOR A MUNICIPAL ENTERPRISE LICENSE, SUPPORT AND MAINTENANCE AGREEMENT PURSUANT TO CALIFORNIA MULTIPLE ACQUISITION SCHEDULE, SUBJECT TO APPROVAL AS TO FORM BY THE CITY ATTORNEY’S OFFICE

1. RESOLUTION NO. 2004-132 - APPROVING MUNICIPAL PAYMENT PLAN AGREEMENT AND PAYMENT SCHEDULE WITH ORACLE CREDIT CORPORATION FOR PROJECT FINANCING

Chief Information Officer Hendricks and City Manager Hobbs responded to questions of Councilmember Boyajian relative to what the migration of current software was, if this was software for collecting debt, explanation of other terms, if this was being done to save money, and if the city would own the software.

143-121

4/13/04

On motion of Councilmember Boyajian, seconded by Councilmember Sterling, duly carried, RESOLVED, the Chief Information Officer authorized to negotiate and enter into a “piggyback” contract under Oracle’s California Multiple Acquisition Schedule Agreement Supplement No. 7 (“CMAS Agreement”) for a Municipal Enterprise License, Support and Maintenance Agreement with Oracle Corporation, subject City Attorney approval as to form, and the above entitled Resolution No. 2004-132 hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes : None
Absent : None

(1-N) RESOLUTION NO. 2004-133 - 80TH AMENDMENT TO AAR 2003-209 APPROPRIATING \$951,000 TO FUND INCREASES IN FRESNO CITY EMPLOYEES ASSOCIATION (FCEA) AND FRESNO POLICE OFFICERS ASSOCIATION (FPOA) MEMORANDUMS OF UNDERSTANDING (MOU) AND LEGAL COSTS ASSOCIATED WITH THE DEFENSE OF CONTRACT COUNSEL CASES IN THE GENERAL FUND

Budget Manager Smith responded to questions of Councilmember Boyajian relative to what the service costs have been and what had been approved contractually.

On motion of Councilmember Boyajian, seconded by Councilmember Calhoun, duly carried, RESOLVED, the above entitled Resolution No. 2004-133 hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes : None
Absent : None

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RECESS - 2:51 P.M. - 3:00 P.M.

(2:00 P.M. #2) CLOSED SESSION:

(A) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - CASE NAMES:

1. SCOTT DAVID HARDIE V. COF, ET AL.
2. JOE ANTHONY MADRID V. COF, ET AL.
3. LINDA TAYLOR V. COF, ET AL.
4. FRIENDS OF DICKEY PLAYGROUND V. COF, ET AL.
5. A.H.D.C. V. COF, ET AL.
6. BAKMAN WATER COMPANY, INC., V. BOEING NORTH AMERICAN, INC., CITY OF FRESNO, THE U.S. DEPARTMENT OF ARMY CORPS OF ENGINEERS, ET AL, USDC CASE NO. CIV-F-01-6249 REC DLB

(B) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - CASE NAME: OLD HAMMER FIELD/FRESNO AIR TERMINAL ("OHF/FAT") ENVIRONMENTAL SITE

The City Council met in closed session in Room 2125 at the hour of 3:00 p.m. to consider the above issues and reconvened in regular open session at 4:52 p.m.

CLOSED SESSION ANNOUNCEMENT - CITY ATTORNEY

City Attorney Montoy announced in the matter of **A-5**, A.H.D.C. v. COF, Council authorized the filing of a cross-appeal on a vote of 6-0-1 with Councilmember Sterling absent; and in the matter of **A-3**, Linda Taylor v. COF, Council approved a settlement in the amount of \$8,000 on a vote of 6-1 with Councilmember Dages voting "no".

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(2-A) RESOLUTION NO. 2004-134 - AUTHORIZING AND APPROVING THE BORROWING OF FUNDS FOR FY 2004-2005, THE ISSUANCE AND SALE OF 2004-2005 TAX AND REVENUE ANTICIPATION NOTES ("TRANS") IN AN AMOUNT NOT TO EXCEED \$45,000,000, AND PARTICIPATION IN THE CALIFORNIA COMMUNITIES CASH FLOW FINANCING PROGRAM

City Manager Hobbs gave a brief overview of the issue **(7 - 0)** as contained in the staff report as submitted and advised this has been done every year since 1985.

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Barbara Hunt, 2475 S. Walnut, spoke to the issue.

On motion of Councilmember Dages, seconded by Councilmember Sterling, duly carried, **RESOLVED**, the above entitled Resolution No. 2004-134 hereby adopted, and the City Manager, Controller and City Clerk authorized to execute the appropriate documents, including the Official Statement, Note Purchase Agreement and other documents necessary to issue the TRANS, by the following vote:

Ayes	:	Boyajian, Calhoun, Dages, Duncan, Perea, Sterling, Castillo
Noes	:	None
Absent	:	None

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(3-A) REQUEST FOR APPROVAL OF THE PROPOSED LANDSCAPE AND PARKING IMPROVEMENTS AND RELOCATION OF A CANOPY LOCATED AT GUADALAJARA RESTAURANT AT 3020 N. WEBER, AND WAIVE THE INSTALLATION REQUIREMENT OF THE SIDEWALKS, CURBS AND GUTTERS - COUNCILMEMBER BOYAJIAN

Councilmember Boyajian reviewed the issue as contained in his report to Council as submitted and requested Council's support stressing the city needed to be business friendly. Dan Ronquillo, representing the restaurant owner, and Landscape Architect Paul Saito, gave a further review of the issue and the proposed landscaping and improvements, displaying a site plan to illustrate.

Planning & Development Director Yovino spoke to the background of the issue, noted the canopy was installed without the benefits of permits and advised the owner would have to process an amended entitlement/site plan to address that issue, clarified before the street improvements could even be considered the amended application was needed, and relative to the request for a waiver stated there was no legal way to waive the requirement but advised there were provisions in the code that allowed for a deferral and that could be looked at but added he could make no promises this date.

Barbara Hunt, 2475 S. Walnut, spoke in support of the business.

Councilmember Calhoun stated this was a question of equity and if special deferments are made here they should be made everywhere; advised he has had to say "no" to some of his constituents on their requests on code violations; suggested Councilmember Boyajian use his infrastructure budget funds stating that would be a proper use and a way to resolve the matter; and stated as worthy as this business was he had a fundamental problem with making a unilateral decision. Councilmember Sterling questioned if the business was located in the Enterprise or Empowerment Zone, stated these types of cases should be considered on a case-by-case basis considering the purpose and employment and job retention, and stated there were options out there and urged the owner to work with staff and take advantage of any deferrals.

City Attorney Montoy noted the issue was before Council due to code enforcement action and advised the city could still insist on curbs and gutters, and stated this item was before Council prematurely as the site plan had not yet been filed and advised once the site plan is filed Councilmember Boyajian could bring the issue back. Councilmember Boyajian stated he would let the matter go through the proper procedure and then go from there, clarified he brought the issue forward because of the unfairness of the city and spoke to his wish for public works to bond this area, stated it was council's responsibility to bring forth these kinds of issues and they needed to be considered on a case-by-case basis, and stressed things were not equal no matter what people think. There was no further discussion.

(3-B) DISCUSSION REGARDING THE PROPOSED RIVER RANCH ESTATES SUBDIVISION AND NORTH FORK VILLAGE INFRASTRUCTURE MASTER PLAN AND DESIGN GUIDELINES: REZONING TO MATCH SUBDIVISION PLAN IN MADERA THAT BORDERS THE SAN JOAQUIN RIVER - COUNCILMEMBER CALHOUN

President Castillo advised the Madera Board of Supervisors was requesting the matter be held over one week so they could have a representative present to answer any questions, with Councilmember Calhoun stating he would not put the matter off as the Board could take this issue up at any time and formally vote on it, and clarified he brought this issue forward for discussion purposes only. Councilmember Calhoun reviewed the issue as the city's appointee to the San Joaquin River Conservancy Board who weighs in on issues of development on either side of the river, and as a member of the City Council; spoke to the relationship that was established with the Board to discuss good and regional planning; spoke to the proposed development and concerns as contained in his report to Council as submitted, and questioned if Council wanted to weigh-in on this issue and requested Council and staff input.

143-123

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Planning & Development Director advised in early 2001 the city formally responded in writing to the notice of preparation for the EIR for this project identifying a number of issues and concerns that staff felt needed to be addressed; noted since adoption of the general plan workshops have been held with the Board and staff has been watching to see what would happen; advised staff has asked Madera to notify the city of the formal hearing date to certify the EIR; and stated normal practice would be to prepare a response to Madera County restating the city's concerns.

Barbara Hunt, 2475 S. Walnut, spoke to jurisdictional issues.

Upon question of Councilmember Duncan, Mr. Yovino stated the comments would be ready in seven to ten days whereupon Councilmember Duncan stated Council should delay discussion until staff's comments are prepared and received. Mr. Yovino added Fresno County asked the city to join in on their letter **(8 - 0)** and he felt a joint response should be looked into. Councilmember Boyajian spoke to the increased development in the county and how they are not complying with agreements and questioned how they could comment on other developments, and questioned if Council could comment on anything else besides the EIR or if the city could file a restraining order or litigation at this point, with City Attorney Montoy responding. Councilmember Calhoun spoke to the important issue of water stating the public utilities department also needed weigh-in on the issue; clarified he brought this issue forth so no one could claim they did not know about this precedent-setting decision; stated if this project takes place Rio Mesa will follow; and stressed Council needed to work with Madera so that our children and grandchildren will not hate us for what decisions are made today. City Manager Hobbs stated staff would send a letter to Madera County expressing the city's position including (1) serious concerns about the project if not outright opposition, (2) sensitivity to Madera County's perspective, and (3) a willingness to engage them in a dialog about long-range regional planning possibly in concert with Fresno County, Clovis and the ag community. There was no further discussion.

UNSCHEDULED ORAL COMMUNICATIONS:

APPEARANCE BY BARBARA HUNT REGARDING CONFLICTS WITH THE REDEVELOPMENT AGENCY AND THE CITY OF FRESNO

Appearance made.

SCHEDULED COMMUNICATIONS - COUNCILMEMBER CALHOUN

Councilmember Calhoun noted he has brought this matter up before and requested scheduled communications be scheduled in the morning at a time certain stating it made no sense to have scheduled and unscheduled communications at the end of the meeting citing the need to be sensitive to citizens who wait all day to speak. City Attorney Montoy stated that has been her consistent recommendation to meet the Brown Act and advised she would work with the Council President to bring back a rule to that effect. President Castillo added if a person is waiting to speak and Council is running behind they can be given the option to be placed on scheduled communications the following week.

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ADJOURNMENT

There being no further business to bring before the City Council, the hour of 5:53 p.m. having arrived and hearing no objections, President Castillo declared the meeting adjourned.

APPROVED on the ____20th____day of _____APRIL_____, 2004.

_____/s/_____
Brad Castillo, Council President

_____/s/_____
Yolanda Salazar, Assistant City Clerk